COURT NO. 2

In the High Court of Uttaranchal at Nainital.

Appeal From Order No. 411 of 2003.

Smt.Nandita Joshi W/o Sri Ashish Joshi
D/o Sri B.C.Joshi, R/o Long View,Tallital, Nainital

..... **Appellant.**

Versus

Sri Ashish Joshi S/o Sri Jagdish Prasad Joshi,
R/o Apartment No.61, Ex Servicemen Colony,
SNS Guest House, RT Nagar, Bangalore.

..... **Respondent.**

.....

Date: 23rd Aug.,2004

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma,J.

Heard Smt.Pushpa Joshi, learned counsel for the appellant and Sri Pradeep Lohani, learned counsel for the respondent at length.

This is an appeal against the order dated 21.10.2003 passed by the Principal Judge, Family Court, Nainital in Civil Suit No.97 of 2001, by which application paper No. 40-C/70-C moved by defendant Nandita Joshi has been rejected as infructuous.

Application paper No.40-C was filed with a prayer that the suit is premature as it was filed on 08.6.2000, while the marriage between the parties was solemnized on 23.01.2000. Therefore the suit is barred by provisions of Section 14 of the Hindu Marriage Act, 1955 ***(hereinafter referred to as the Act)*** and is liable to be dismissed as the same has been filed within six months of the marriage. The suit was presented under Sec. 13(1)(iii) of

the Act before the Judge, Family Court, Bangalore on 08.06.2000. Alongwith the suit an application under Sec. 14(1) of the Act was also filed seeking permission that the suit be entertained within a period of one year. On this application notice was issued to the defendant. On the receipt of the notice, the defendant (appellant) filed application for transfer of the case from Bangalore to Nainital. The matter went up to the Supreme Court and vide order dated 05.01.2001 of Hon'ble the Supreme Court the suit was transferred to District- Nainital.

The learned Judge, Family Court has recorded a finding that the suit was entertained by the Family Court, Nainital on 04.12.2001 and treated the suit to be within time accordingly and held that the application moved by applicant (respondent) under Sec. 14(1) of the Act was rendered infructuous. Application paper No. 40-C/70-C was filed by the defendant (appellant) on 01.8.2003 i.e. after two years and eight months after the marriage between the parties, therefore, the application was also rejected as infructuous.

From the facts, as we found in the impugned order, it is not disputed that the suit was filed at Bangalore within one year and notice on the application under Sec. 14(1) of the Act was issued to the defendant. The defendant contested the case. With regard to the transfer of the case, it was transferred from Family Court, Bangalore to Family Court, Nainital, therefore institution of the suit will remain to be same i.e. the date of the filing of the suit will be the same on which it was instituted at Bangalore. Therefore, the application under Sec. 14(1) of the Act could not be said to be rendered infructuous and it was remained undisposed of.

The learned counsel for the parties admittedly on merit submitted that the dates given in the order of the Family Court are not disputed. From these dates it is clear that the suit was barred by provisions of Section 14 (1) of the Act.

Therefore, the application paper No.40-C/70-C is allowed and the suit filed by the applicant (respondent) for divorce is dismissed, as the suit was being premature. The impugned order dated 21.10.2003 is set aside. No order as to costs.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh